BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

BLAIR HARDENBROOK)
Claimant)
VS.)
) Docket No. 1,010,871
SHERWOOD CONSTRUCTION CO., INC.)
Respondent)
AND)
)
LIBERTY MUTUAL INSURANCE COMPANY)
Insurance Carrier)

ORDER

Claimant appealed the August 19, 2003 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

On April 9, 2003, claimant crashed the truck that he was driving while on his way home from work. In the August 19, 2003 Order, Judge Clark denied claimant's request for workers compensation benefits after finding that claimant's accident did not arise out of and in the course of his employment with respondent.

Claimant contends Judge Clark erred. Claimant argues that driving was an integral part of his job and, therefore, claimant's accident is an exception to the "going and coming rule" set forth in K.S.A. 2002 Supp. 44-508(f). Accordingly, claimant requests the Board to reverse the August 19, 2003 Order and grant him benefits.

Conversely, respondent and its insurance carrier contend the August 19, 2003 Order should be affirmed. They argue that the Judge properly construed the law and determined that claimant's accident is not compensable under the Workers Compensation Act.

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes that the August 19, 2003 preliminary hearing Order should be affirmed. The Board adopts the findings and conclusions set forth by the Judge as its own.

Respondent constructs roads and highways. Respondent employed claimant as a mechanic to work on its equipment. On April 9, 2003, claimant crashed the truck that he was driving home from work. Shortly before the accident, claimant had stopped to tell a coworker that the coworker was not required to work the next day. But at the time of the accident, claimant had returned to the route that he regularly took home.

Although claimant would regularly drive to different sites during the day to work on respondent's equipment, the evidence introduced to date indicates that claimant regularly began his workday at either the Buffalo or Thayer, Kansas, work sites. And on April 9, 2003, claimant began his trip home from the Buffalo site.

In *Butera*,¹ the Kansas Court of Appeals essentially held that driving to and from a regular job site is not considered an integral part of the job for a worker who is temporarily assigned to work at that site. The present claim is analogous. Although the Buffalo and Thayer work sites were temporary in the sense that they would no longer exist after respondent completed its road projects in the area, claimant regularly drove to those sites to begin his workday. Therefore, under K.S.A. 2002 Supp. 44-508(f) and the principles set forth in *Butera*, any accident that claimant sustained while going home from the Buffalo job site would not be compensable under the Act.

The Board finds no reason to disturb the Judge's conclusions that at the time of the accident claimant's workday had concluded and that claimant's accident did not arise out of and in the course of claimant's employment with respondent.

WHEREFORE, the Board affirms the August 19, 2003 Order entered by Judge Clark.

IT IS SO ORDERED.

¹ Butera v. Fluor Daniel Const. Corp., 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. ____ (2001).

Dated this	day of September 2003.	
	BOARD MEMBER	₹

c: David H. Farris, Attorney for Claimant

John R. Emerson, Attorney for Respondent and its Insurance Carrier

John D. Clark, Administrative Law Judge

Paula S. Greathouse, Workers Compensation Director